

## Comments on the Western Washington NPDES Phase II Municipal Stormwater permit with suggested wording changes (City of Vancouver – May 2006) - Page 1

The following sections include the original language of a provision, recommended wording changes *in blue italicized font*, and the reasons that the City feels the provision should be changed.

### 1. SECTION S2.B

#### ***Original language:***

B. This permit authorizes discharges of stormwater associated with industrial and construction activity and process wastewater discharges from municipal separate storm sewers owned or operated by the Permittee to waters of the state only under either condition:

1. Stormwater associated with construction or industrial activity, as defined by 40CFR122.26, is authorized by a separate individual or general National Pollutant Discharge Elimination (NPDES) permit; or
2. Process wastewater is authorized by another NPDES permit.

***Recommended change*** – If the intention is to include a provision directing Phase II communities to oversee state permit compliance, then this could be better accomplished by deleting the “only” in the first sentence and adding the following clarifying statement and re-writing as follows:

B. This permit authorizes discharges of stormwater associated with industrial and construction activity and process wastewater discharges from municipal separate storm sewers owned or operated by the Permittee to waters of the state *only* under either condition:

1. Stormwater associated with construction or industrial activity, as defined by 40CFR122.26, is authorized by a separate individual or general National Pollutant Discharge Elimination (NPDES) permit; or
2. Process wastewater is authorized by another NPDES permit.

*Notwithstanding the foregoing, the Permittee shall not be held in violation of this permit if, in the course of monitoring industrial and construction activities, the Permittee identifies a facility or site that is discharging stormwater associated with construction or industrial activity, as defined by 40CFR122.26, into the municipal separate storm sewers without a separate individual or general NPDES permit. In such cases the Permittee shall notify Ecology, or the appropriate permitting agency, of the identified site.*

#### ***Reason for change:***

In our interpretation, if we encounter an industry that is discharging to our municipal storm system which (under the definition from 40 CFR 122.26) is either an industrial activity or a construction activity, but does not have a general or individual NPDES permit, then we will be in violation of our Phase II permit.

Since a municipality does not have the authority to write an individual or general industrial stormwater permit, our only course of action when we encounter an unpermitted industry which

## **Comments on the Western Washington NPDES Phase II Municipal Stormwater permit with suggested wording changes (City of Vancouver – May 2006) - Page 2**

falls under this classification would be to somehow stop their stormwater discharges (by plugging their catch basins?).

Through our business inspection program, the City currently has identified sites in Vancouver that should probably have stormwater permits but do not. If this Phase II permit were in force then the City would be in violation by allowing “discharges of stormwater associated with industrial or construction activity” to our municipal system, which in turn discharges to the waters of the state. This is also a concern for third party lawsuits, similar to a previous lawsuit, where the City could be liable if Ecology hasn’t issued a permit.

There are many reasons a facility that should be permitted hasn’t been. The recommended wording states that a Phase II community would not be in violation of their permit when it is found that an industrial or construction site has not been issued an NPDES permit, and would add wording for the Permittee to be involved in identifying sites for permitting.

Additionally if the concern is about these dischargers discharging contaminants into the City’s storm sewer system, appropriate authority exists under proposed condition S.5.C3.b which would require the City to take appropriate enforcement and other actions against the discharger in the event they are illegally discharging to the storm sewer system.

### **2. SECTIONS S2.A.1, S4.A, C & D**

#### ***Original language with proposed change to S4.A:***

S2.A.1 All discharges into and from municipal separate storm sewers owned or operated by Permittees must be in compliance with this permit.

S4.A. In accordance with RCW 90.48.520, the discharge of toxicants to waters of the state of Washington which would violate any water quality standard, including toxicant standards, sediment criteria, and dilution zone criteria are prohibited. *The Permittee shall not be held in violation of this permit for discharges of toxicants into the MS4 from sources outside of the Permittee’s control if the Permittee has employed all known, available and reasonable methods to reduce and prevent these discharges as required in sections S4.C and S4.D.*

S4.C. The Permittee shall reduce the discharge of pollutants to the maximum extent practicable (MEP).

S4.D. The Permittee shall use all known, available, and reasonable methods of prevention, control and treatment (AKART) to prevent and control pollution of waters of the state of Washington.

#### ***Reason for change:***

The MEP and AKART provisions define the levels of pollution prevention and control to be achieved by the Permittee. Section S4.A goes above and beyond that level by stating that toxic discharges are prohibited and could therefore be interpreted as a violation of the permit. A municipality should not be held liable for discharges of pollutants entering from an unknown source if it has followed the provisions of the permit as required. Adding the proposed language to S4.A alleviates the liability concerns inherent in S2.A.1 and S4.A.

## Comments on the Western Washington NPDES Phase II Municipal Stormwater permit with suggested wording changes (City of Vancouver – May 2006) - Page 3

### 3. SECTION S5 A-3(a)

**Original language:** Each Permittee shall track the cost of development and implementation of the SWMP.

**Recommend changing to:** Each Permittee shall track the costs of development and implementation of the SWMP. *Cost tracking shall begin, at a minimum, on the permit issuance date.*

**Reason for change:** In Vancouver's case we completed our stormwater protection ordinance in 2002 with a goal of addressing the minimum standards of the NPDES permit. Since then there have been numerous activities and expenditures that could be considered costs of development and implementation of the SWMP. As the permit is written now, it could be interpreted that when we prepare our Annual Report in 2008 we would need to go back 6 years (or more) to detail all of the costs related to developing our Stormwater Management Plan and our compliance with the NPDES Phase II permit.

### 4. SECTION S.5.C.3.b.ii

**Original language:** The regulatory mechanism shall prohibit the following categories of non-stormwater discharges unless the stated conditions are met:

**Discussion of this section:** This is a confusing section of the permit that could be improved with rewording and reorganization. The goal of this section is to specify what a Permittee will include in an ordinance (the "regulatory mechanism"), but it also contains education and maintenance requirements which a municipality would not include in a city ordinance. In other words, we wouldn't write a provision that says "citizens are prohibited from discharging lawn watering into the street unless the city develops related education activities and promotes water conservation".

**Organization and wording suggestions:**

The initial provision states that *discharges are prohibited*, but then says that *they are actually allowed* if the conditions are met. In a city ordinance we would state that these are allowed conditionally. For example:

*The regulatory mechanism shall allow the following categories of non-stormwater discharges only if the stated conditions are met:*

- *Discharges from potable water sources, including water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH adjusted, if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments.*

- ~~*Discharges from lawn watering and other...*~~

The lawn watering (2<sup>nd</sup>) bullet point should either be deleted or moved. It is unrealistic to prohibit by city ordinance all lawn watering that might end up in a city street, and saying that it could be

## Comments on the Western Washington NPDES Phase II Municipal Stormwater permit with suggested wording changes (City of Vancouver – May 2006) - Page 4

allowed if the city develops an educational program doesn't make sense. It could be a target for public education in section S5.C.1, however.

- *Dechlorinated swimming pool discharges **only** if they have been dechlorinated to a concentration of 0.1 ppm or less, pH adjusted if necessary, reoxygenated, and volumetrically and velocity controlled to prevent resuspension of sediments. Swimming pool cleaning wastewater and filter backwash shall not be discharged to the MS4.*
- *Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents. ~~The Permittee shall reduce these discharges through, at a minimum, public education activities and /or water conservation efforts. To avoid washing pollutants into the MS4, Permittees must minimize the amount of street wash and dust control water used.~~ At active construction sites, street sweeping must be performed prior to washing the street.*

The sentences stating that “the Permittee shall reduce these discharges through, at a minimum, public education...” and “the Permittee must minimize the amount of street wash and dust control water used” do not belong in a city ordinance, since the only affected party would be the city itself. The more appropriate place for this language is in the Public Education section S.5.C.1 and the Pollution Prevention and Operation and Maintenance section S.5.C.5.f.

Note also that by making these **allowable** discharges, the part about “external building wash down that does not use detergents” makes more sense. As a **prohibition** it implies that wash down *using* detergents would be allowed.

### 5. SECTION S.5.C.3.c.ii (second bullet)

**Original language:** Screening for illicit connections shall be conducted using: *Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments*, Center for Watershed Protection, October 2004, or other comparable methodology.

**Recommend changing to:** Screening for illicit connections shall be conducted using: *Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments*, Center for Watershed Protection, October 2004, or ~~other comparable methodology~~ *another methodology of comparable effectiveness.*

**Reason for change:** The City of Vancouver employs Source Control to detect illicit discharges, which may not be considered comparable to the IDDE outfall reconnaissance and sampling methods in the cited *Guidance Manual*.

We contacted the authors of the *Manual*, Ted Brown and Robert Pitt, to discuss the two approaches. Mr. Brown responded saying: “I agree with your comments. Our guidance was certainly not intended to be a one size fits all. Communities with good initiative, such as Vancouver, understand their local conditions better than anyone and therefore should have the flexibility to develop a

## **Comments on the Western Washington NPDES Phase II Municipal Stormwater permit with suggested wording changes (City of Vancouver – May 2006) - Page 5**

*program that works for them. What you describe is what I think of as source control and assessing illicit discharge potential associated with generating sites.”*

We’d like the Phase II permit to clearly recognize that a community has the flexibility to develop a different program that would be at least as effective in screening for illicit discharges as the methodology described in the *Guidance Manual*.

### **6. SECTION S8.C.1.c**

Runoff treatment Best Management Practices (BMP) effectiveness monitoring.

***Comments on this section:*** It is the opinion of the City Attorney that this section should be eliminated based on the following: It arbitrarily imposes requirements based on population classifications and would require the City of Vancouver to monitor two BMP’s at four sites. We do not believe that the Clean Water Act or NPDES process gives the Department of Ecology authority to impose this as a condition of an NPDES permit. The condition may also violate RCW 43.135.060 which prohibits imposing a new program such as this one unless the city is “...reimbursed by specific appropriation by the state for the costs of the new program...”.